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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
Subject:	Outcome of proceedings of the Working Party on Dual Use Goods of 19 January 2023

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (29.07.2024)

1. Presentation of the work programme of Swedish Presidency

Swedish Presidency presented priorities for the EU Council Presidency. In DUWP the focus will be on promoting effective and coherent implementation and enforcement of EU Regulation 2021/821 on Dual-use items, including *tours-de-table* on topics of interest, exchanges of best practices, briefings, elaboration of guidelines. Under SE Presidency, DUWP will continue to contribute to effective implementation and shaping of dual-use sanctions on Russia/Belarus. Finally, through Export Control working group, DUWP will actively contribute to the EU-US Trade and Technology Council in delivering its objectives.

2. The Dual Use Working Group Mandate

The Chair of DUWP recalled discussions launched in DUWP last autumn with regard to the DUWP mandate, and the subsequent non-paper by CZ Presidency on the proposed way forward. The outcome of the discussions held earlier suggested the need for a clarification of the mandate.

The aim of the Presidency is to set up a task-force composed of volunteering Member States that will prepare the draft mandate on basis of a template for broader discussions in the group. The task force will meet virtually and debrief in Plenary the outcome of their proceedings. The Chair recalled that a similar exercise took place in 2020/2021 when mandates of several Council WP were revised (incl. COARM/CONOP) and recalled that the mandate should be rather general and future-proof.

The proposed timeline: discussions in Dual-Use WP on the basis of a draft mandate and approval by the DUWP by end of March and approval by COREPER of the revised mandate in April ('I' item).

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Intervening Member States appreciated the initiative of the Presidency, expressed active support and willingness to participate in the task force. They also agreed on the timeline proposed and working arrangements, namely, virtual meetings and drafting held in the Task Force and discussions at Plenary. On the content, some delegations explicitly mentioned it important to include a reference to the discussions on restrictive measures. The Chair of DUWP took due note of the comments.

The Task Force is currently composed of the following MS: – BE DE, ES, FR, HU, IE, IT, NL, PT, RO. Member States that did not volunteer on the spot but willing to join the Task Force were invited to contact the Presidency.

Next steps: The Chair will convene a virtual meeting with the participants of the Task Force and the Council Legal Service and the Secretariat to prepare a first draft of the revised mandate on the basis of a template. DUWP will be invited to take note at its February meeting.

3. Implementation of the Regulation EU 2021/821

a) The exceptional update of Annex I, in light of 2022 decisions of AG: state of play. Timeline for 2023 update.

Commission informed DUWP that the Delegated Act in light of the exceptional update of Annex I of the Regulation EU 2021/821 to take into account controls adopted by the Australia Group, will be adopted by the Commission on 6 February 2023.

After that date, the usual two months non-objection period will be launched for the Council and the European Parliament. COM confirmed that the US has already adopted the controls on marine toxins.

Furthermore, COM presented the timeline for the preparation of the Commission Delegated Regulation updating the EU control list in Annex I to Regulation (EU) 2021/821, as outlined in WK 606/23. Distribution to the DUCG of the first draft of the EN version of 2023, containing the updated EU list of dual-use items for comments and amendments from MS, is expected the first week of February.

The final version of the draft delegated regulation amending the EU list of dual-use items will be presented to MS and EP experts in a special session of the DUCG on 15 March 2023. The aim of the Commission is to adopt the Delegated Regulation on 7th July before launching the mandatory Council and European Parliament non-objection period.

In their comments MS thanked the COM for the initiative to accelerate the process and hoped that the accelerated procedures wouldn't impact the quality of work.

DUWP will continue to receive regular updates on all the steps.

b) Updates on work in technical groups - 2023 Plan

COM presented its non-paper on New rules on data collection and preparation of the dual-use export control annual report and invited MS to consider options for the collection and publication of data concerning global and general authorisations.

COM also recalled that the Technical Expert Group on Data Collection and Transparency was established in February 2022. After eight meetings over nine months of intensive discussions on four iterations of draft guidelines, the DCT-TEG has prepared project of guidelines.

A public consultation will be launched in January 2023 to invite stakeholders to provide comments on the implementation of Article 26 of the Dual Use Regulation.

While TEG experts have finalised discussions on most aspects of the guidelines, they are still exploring options regarding one important aspect, i.e. the collection of data (values, destinations) on general and global authorisations.

There was no requirement for the collection of such data under Regulation (EC) No 428/2009 and not all competent authorities currently collect such data, e.g. values for specific items and specific destinations under global and general authorisations.

COM invited MS to assess new elements for setting up dedicated mechanisms to collect such information (value and destinations). This could be achieved by e.g. using data reported by exporters in line with applicable national rules and as supported by Internal Compliance Programmes, or by resorting to customs' statistics on exports.

In the ensuing debate, the Chair of the DUWP emphasised that technical discussions are taking place at the experts group, and invited DUWP delegates to focus on policy decisions.

In their reactions Member States considered that some issues still remained open concerning Annexes of the guidelines and asked to clarify the process on public consultation, accentuating that the Guidelines should be destined for those who draft reports, namely, to exporting entities and public administrations.

They also stressed the need to reflect on what data be reported on General Export Authorisations without referring to actual exports data. They emphasised that this report cannot refer to actual exports, but only to the authorisations, because the data on actual exports belong to customs authorities and did not see the need for the extension of the scope to include all the exports in the report. Several delegations admitted that there are differences in interpretation of Article 26 amongst the MS. The interpretation by the CLS of the Article 26 of the Dual-Use Regulation would be appreciated.

Reacting to MS comments, COM concluded that the open issue concerns not Global Authorisations but only EU General Authorisations which are issued at EU level. COM recognises practical challenges compared to previous regulation when reporting was done on voluntary basis. COM is keen on looking into practical solutions to minimise administrative burden. However, considering that Global and General Authorisations represent an important share of the total value of dual-use, the lack of data (value, destinations) for those licenses would not be consistent with the policy objectives of DU Regulation to enhance transparency.

DUWP will revert to the issue at one of its forthcoming meetings.

c) Changes to national export control policies

Ireland updated on the country's first foreign investment screening regime that will come into force soon. IE is also working on a new Export Control national regulation that will update and strengthen the previous regime. IE will brief DUWP on the new Export Control law at one of its forthcoming meetings.

Belgium (Flanders) announced that through its website (<https://www.fdfa.be/nl/vlaams-exportcontrolebeleid>) it informs companies on its general policy line – in relation to defence related end uses, towards certain destinations (China, Israel, Pakistan, Saudi Arabia, Turkey, United Arab Emirates).

Belgium (Wallonia) informed DUWP that as of 13 February, Wallonia will use e-licencing system.

d) Cooperation with Third Countries – discussion of 2023 Plans

- EU-US TTC Export Control Working Group

COM outlined that the report of the 3rd EU-US TTC WG meeting that was circulated on the Delegates Portal and invited MS to take note of it.

Furthermore, COM recalled that the Work Plan for the EU-US TTC ECWG7 as approved by DUWP (WK 5356/22 REV3) remains valid, and asked MS who wish so, to review it and to submit suggestions in line with 2023 objectives and taking into account the outcome of discussions held previously. MS were also invited to take stock of the stakeholder events organised in TTC ECWG framework so far. Depending on the nature of comments, COM will assess the need to amend the Work Plan. MS are invited to provide written comments by early February. DUWP will revert to the topic at its February meeting.

MS wished to clarify plans for 2023 meetings. Ministerial level meeting will take place in Sweden during the 1st semester. Export Control WG7 will meet in spring, before the principals meeting, however, dates are still to be confirmed.

- Other countries

COM informed the Group that the Chinese Ministry of Commerce has published for comments a draft revision of China's Catalogue of Technologies Prohibited or Restricted from Export, resulting

from CN update of its Export control law. The deadline for submitting comments to China is 28 January. <http://fms.mofcom.gov.cn/article/tongjiziliao/202212/20221203376696.shtml>.

The call for comments is issued according to the relevant provisions of the *Foreign Trade Law* and regulations on the administration of import and export of technology. The revisions propose, amongst others, to delete or amend existing technical entries, and to add seven new technical entries, and it contains 139 prohibited or restricted export technologies.

COM intention is to submit EU comments on the revised provisions and it invited all the interested MS to submit their input directly to the Commission.

COM will circulate to the DUWP the complete draft catalogue in Chinese and an unofficial English translation of the amended parts of the catalogue.

5. *Tour-de-Table on Implementation and Enforcement of the Regulation EU 2021/821*

The Chair of DUWP presented the Presidency paper (WK 190/23) and shared the intention of the Presidency to hold regular exchanges with MS in form of a *Tours-de-Table* to focus on topics of particular interest, related to the implementation of the Dual Use Regulation. The PRES paper outlines non exhaustive list of topics for the future TdTs and MS were invited to provide other ideas.

In their reactions, MS broadly supported the idea of organising regular TdTs, but were cautious as not to duplicate work of the DU Coordination group. With respect to future topics, most of the MS would like to exchange practices on Article 10 implementation and national control lists, as well as on Article 5 and cybersurveillance provisions. Controls of Intangible technology transfers were also mentioned. Less important would be the topic on fees, as majority of MS do not have such as system in place.

- *Internal Compliance Programmes and Global Licenses*

Based on guiding questions, MS shared national practices concerning applications for Global licences and the EUGEA 007.

Majority of MS reported that their national legislation requires that an exporter attaches an ICP to the application for the Global licence. They outlined, that in general exporter needs to submit a number of documents and/or reply to a detailed questionnaire or questions by the licencing authorities.

Several MS stated that in their countries, when a company applies for a global licence, the company should be known, trusted and have a solid experience exporting under individual licences.

Five MS reported that they don't require an ICP during the application but review it at a later stage during audit or visit to the company. However, some MS request for the exporter to confirm in the application/registration that they have an ICP.

Concerning applications for the EUGEA 007, many MS reported that they do not have or has had very few applications for the EUGEA 007. Majority of MS said that in their national practice, an ICP would be required for the application for EUGEA 007 and exported would be duly informed in such case. A few MS stated that the procedure would be the same as for global licences – no ICP needed upon application for the licence but the company is screened, visited or audited.

Replying to the question on the review of the exporters ICP before granting the global license, majority of MS reported that the documentation related to the ICP is reviewed by authorities or verified on the spot, with specific questions asked to companies. Decisions on licence granting are made on that basis. One MS stated that no review of the IPC is taking place before granting the global licence

Several MS have the practice that the ICP is reviewed only the first time when the company applies for a global licence, but not reviewed in case of regular exports.

Those MS who reported that an ICP is not needed upon the application, confirmed that they reviewed the exporters ICP in a later stage or during an audit.

To the question whether MS have a separate process to pre-approve or verify an exporters ICP before the exporter can submit an application or registration, most of the delegations confirmed that there was no separate process. Some MS require companies to possess the ICP but do not pre-verify it. One MS confirmed that there is a separate process for the licencing authority to informally verify the ICP before the export application.

Reacting to the practises shared by the MS, COM said that it could be useful to reflect on the commonalities at EU level to develop better national approaches. On a general note, COM looks forward to future exchanges on topics of interest, paying attention to no duplicate work in the DUCG.

6. Export controls in a Broader Context

PRES launched the discussion by explaining that under this regular agenda item, the SE Presidency would introduce and exchange on export controls and linkages to other policy areas. Under this item the delegations will be also invited to support preparations for example of the TTC.

COM (DG Trade F4) gave a presentation on interaction between FDI Screening and Export control, focusing on EU framework for FDI screening, interaction between FDI and Export Control with proposed actions for engagement of both communities, as well as on proceedings on FDI in TTC context. (Presentation available on DP).

Concerning the proposed actions for engagement between both communities, COM suggests to:

- Collect the information on basis of informal questionnaires to get better understanding of different national practices. In this respect, new questionnaires will be distributed to complete analysis, by obtaining missing replies info on licencing history;
- Send new questionnaire to MS Export Control authorities about their interaction with FDI screening work and FDI screening authorities;
- Identify collectively good practices;
- Organize joint informal technical meeting(s) with DUWP and FDI Screening experts and report progress to DUWP.

Concerning the activities on FDI withing EU-US TTC framework, COM invited to consult Futurium website: <https://futurium.ec.europa.eu/en/EU-US-TTC/wg8>

In reactions MS welcomed the timely and substantial discussion and acknowledged the link between FDI screening mechanism and export control and agreed on need to involve both communities, confirmed their willingness to reply to the questionnaires, outlined that they have FDI screening mechanism in place and good cooperation between relevant authorities in that respect.

They also agreed that both FDI screening and export controls focus on security issues, but export controls tackle the proliferation of weapons of mass destruction, which is not always the case for FDI screening. In general, MS welcomed the idea of a joint technical meeting. Referring to the EU-US TTC framework, MS outlined that any action proposed within EU-US TTC on FDI screening should be first discussed and assessed by MS. COM reacted by sharing the view that FDI screening mechanism is an internal EU matter. Therefore, there is need to take a collective decision before presenting anything to the US.

COM emphasised that the screening assessment should always be done on case-by-case basis, assessing each transaction, taking into account such parameters as characteristics of investor and capability to harm. In parallel, vulnerability of target is assessed, by verifying if it is critical for EU security. Reacting to question on outbound investment, COM pointed out that it was heavily discussed in the US for months, and it is a difficult and complex matter. While more than a half of MS maintain screening for inbound, no MS screens outbound investments yet. COM will examine whether other tools are necessary for outbound rules. COM confirmed that it will organise a joint technical meeting with export control community and FDI screening contact points. The information will follow.

The Chair of DUWP concluded by expressing support to further engagement, while also acknowledging that FDI screening and export controls are different regimes.

7. Restrictive measures Russia/Belorussia related to dual-use

COM recalled adoption on 16 December of the 9th package of sanctions. DU related amendments included additional entries for sensitive advanced technologies in Annex VII. Many of those items, such as electronic components, have been identified by UA counterparts and are coming from military destroyed systems found on battlefield. New entities associated to RU military industrial complex were also added.

- i. Preparation of new measures - including legal review, technical review, and review of entities.*

COM outlined that for the moment, no concrete date is mentioned concerning adoption of an additional package of sanctions. Most likely, military developments and political situation will have an impact on the decision making.

A number of key events to follow – EU-UA summit early February, visit by COM/PEC to Kyiv, one year remembrance of the aggression. However, internal preparations have started and MS have received standing invitation to contribute to the update of sanctions. Two meetings are scheduled with DUWP experts – on 26 January for technical review, focusing on new items discovered on battlefield and following inputs from MS, and on 27 January – for entities review, focusing on a dozen of new entities. Agendas have been circulated. No meeting on legal review is envisaged, unless requested by MS.

ii. EU Implementation and enforcement, including Denials and authorisations trends analysis

COM presented the Overview of the implementation Articles 2, 2a and 2b of Regulation 833/2014 at EU level during the observation period: March 1 - December 31 2022. Presentation available in DUeS.

MS welcomed the update and the detailed report, deemed very useful for licencing authorities. One MS mentioned overlaps between Annex 23 and Annex 7 and asked for a legal review.

COM considers that a stock taking exercise is needed to deepen the understanding of the data. Discussion would be necessary also on lessons learnt on the implementation of measures. In response to question by a MS, COM also mentioned that general meetings are organised by FISMA on RU sanctions implementation, with DU experts participating.

The Chair of DUWP expressed readiness to have a broader reflection on sanctions implementation, focusing in particular on DU controls and advanced technology.

iii. Cooperation with partners, outreach, and circumvention risks

- **Information exchange with partners**

COM recalled that information exchange with the US is ongoing. Some additional contributions on denials and authorisations have been received from several MS. COM has signalled the readiness to the US to exchange the data. When the US stands ready, the data exchange will take place. MS will be duly informed.

On future system for information exchange – the project for a new functionality in DUeS is in the elaboration phase. This feature would allow to easily extract information. The issue will be discussed in DUCG, on a basis of an IT note. After DUCG meeting, a revised note will be published for the approval.

- **Alignment with partners**

Concerning alignment with like-minded partners, COM confirmed that the technical discussions were concluded with Norway, there is almost full alignment by NO on 8th package of EU sanctions. Canadian government is strongly committed to align dynamically with EU on all provisions. COM is in the process of considering proposal for listing CAN and NO as partners in next package of the Restrictive measures Regulation. Technical exchanges are ongoing with South Korea, with Korean side updating its control lists to be up-to-date and in line with EU controls by March.

8. AOB

- **Questionnaire by the University of Liège related to Vade Mecum on Export controls:** It was recalled that the University of Liege is updating the Vade Mecum on Export controls. A presentation was delivered to DUWP in June. Questionnaires will be sent to the MS individually.

- **Belgium** asked MS to share their experience, if any, on granting licences to DU exports to international waters or to exclusive economic zones.

Next DUWP meeting: 23 February